

APPEAL NO. 042105
FILED OCTOBER 20, 2004

This appeal arises pursuant to the Texas Worker's Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2004. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of _____, includes degenerative joint disease and osteoarthritis of the right knee; and that the claimant reached maximum medical improvement (MMI) on February 16, 2004, with a 29% impairment rating (IR) as reported in an amended report by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appeals, contending that the hearing officer's determination that the compensable injury includes degenerative joint disease and osteoarthritis is not supported by the evidence and is against the great weight and preponderance of the evidence; that the claimant reached MMI on either April 17, 2003, or May 14, 2003; and that the claimant's IR is either 8%, 10%, or 25%. The claimant responds that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to his right knee on _____. Whether the claimant's compensable injury includes degenerative joint disease and osteoarthritis of the right knee was a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination in favor of the claimant on the disputed issue regarding the extent of the compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Sections 408.122(c) and 408.125(c) provide that the designated doctor's MMI and IR report has presumptive weight and that the Commission shall base its determination of MMI and IR on that report unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(ii)) provides that the designated doctor's response to a Commission request for clarification has presumptive weight as it is part of the doctor's opinion. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant reached MMI on February 16, 2004, with a 29% IR as reported by the designated doctor in an amended report is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. In addition, the carrier

has not shown that the designated doctor failed to properly combine the IRs for the right knee.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge